

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

KENNETH BEARD and ROSE BEARD
Plaintiffs

V.

NO. 2:90CV53-B-B

GRENADA NISSAN, INC., BILLY HOUSTON,
JERRY BARNES, and HAROLD BROCK
Defendants

MEMORANDUM OPINION

This cause comes before the court upon the plaintiffs' motion for attorney's fees and case expenses. The court has duly considered the plaintiffs' memorandum and exhibits and is ready to rule.¹

After a bench trial in this matter, judgment was rendered in favor of the plaintiffs and against defendants Grenada Nissan, Inc. and Jerry Barnes. The judgment included reasonable attorneys fees and case expenses pursuant to 15 U.S.C. § 1989(a)(2). The plaintiffs motion seeks fees in the sum of \$10,037.50 and expenses in the sum of \$1,254.70. The plaintiffs have submitted an itemization of services and fees which reflect a total of 103 hours of work performed during a period of 6 years and 6 months.

To determine the appropriate amount of attorney's fees to be awarded, the court must evaluate the twelve factors set forth in

¹ Neither of the defendants against whom a verdict was rendered have responded to the plaintiffs' motion.

Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974),² and determine "a lodestar figure equal to the number of hours reasonably expended multiplied by the prevailing hourly rate in the community for similar work." Nisby v. Commissioners Court of Jefferson County, 798 F.2d 134, 136-37 (5th Cir. 1986); Jackson v. Color Tile, Inc., 638 F. Supp. 62, 64 (N.D. Miss. 1986), aff'd 803 F.2d 201 (5th Cir. 1986). The court must then adjust the lodestar figure to reflect any factors not otherwise subsumed in the lodestar calculation. Nisby, 798 F.2d at 136-137; Jackson, 638 F. Supp. at 64.

The Plaintiffs were represented by Helen Bagwell Kelly and her associate, Mona Tedford Pittman, who expended the following hours:

Helen Bagwell Kelly: 85.5 hours at \$100.00 per hour;

Mona Tedford Pittman: 17.5 hours at \$85.00 per hour;

The defendants, Grenada Nissan, Inc. and Jerry Barnes, have failed to respond to the plaintiffs' request for attorney's fees. Therefore, neither the time expended nor the prevailing hourly rates are disputed. By not contesting the fee requests of the plaintiffs, the defendants, in effect, admit the validity of the requested amounts. See Transamerica Ins. Co. v. Avenell, 66 F.3d 715, 722 (5th Cir. 1995); United States v. Con-Real Support Group, Inc., 950 F.2d 284, 290 (5th Cir. 1992). The court has reviewed

² Under Local Rule 15(b)(3), the Johnson factors are to be considered for any fee application.

the time affidavits of the attorneys and finds the time recorded in the entries to be reasonably expended. The court likewise finds that each of the requested hourly rates is commensurate with the prevailing rates in the community. Therefore, the court finds that the foregoing amount requested by the plaintiffs constitutes the appropriate lodestar amount.

The lodestar is presumptively reasonable and should be enhanced only in certain exceptional cases. Von Clark v. Butler, 916 F.2d 255, 260 (5th Cir. 1990). In the present case, the plaintiffs do not seek an enhancement of the lodestar amount. The court has reviewed each of the twelve Johnson factors³ to determine whether an adjustment to the lodestar is appropriate. Some of the factors have been considered in determining the lodestar amount, such as the time and labor required, the customary fee, and the experience, reputation and ability of the attorneys. For the sake of brevity, and since none of the parties seek an adjustment to the

³ The twelve factors are as follows:

(1) the time and labor required; (2) the novelty and difficulty of the question; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. Johnson, 488 F.2d at 717-719.

lodestar, the court will not address each factor in this opinion; however, the court has reviewed the twelve Johnson factors and finds that an adjustment to the lodestar amount is not warranted.

The defendants further fail to object to the itemization of expenses submitted by the plaintiffs. The court has reviewed the itemization of expenses and finds the entries to be reasonable and necessary. Therefore, the court finds that an award of \$1,254.70 for case expenses is appropriate for this action.

CONCLUSION

For the foregoing reasons, the court finds that the plaintiffs are entitled to an award of \$10,037.50 for attorney's fees and \$1,254.70 for expenses.

An order will issue accordingly.

THIS, the _____ day of March, 1996.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE